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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Twelfth session
25-29 July 1994

ANNOTATIONS TO THE PROVISIONAL AGENDA

Prepared by the Secretary-General pursuant to the request of the Working Group on Indigenous Populations at its eleventh session

1. Election of officers

1. Rule 23 of the rules of procedure of the functional commissions of the Economic and Social Council provides that, unless the Commission decides otherwise, its subsidiary organs shall elect their own officers.

2. Adoption of the agenda

2. Rule 7 of the rules of procedure provides that the agenda shall be adopted at the beginning of each session, after the election of officers, on the basis of the provisional agenda. The provisional agenda for the present session of the Working Group on Indigenous Populations, as drafted in consultations with the present Chairperson-Rapporteur, Ms. Erica-Irene Daes, is contained in document E/CN.4/Sub.2/AC.4/1994/L.1.

3. The provisional agenda for the twelfth session of the Working Group includes, in accordance with the request contained in General Assembly resolution 48/163 of 21 December 1993 and Commission on Human Rights resolution 1994/26 of 4 March 1994, an item on the International Decade of the World's Indigenous People and a sub-item on the proposed International Day of Indigenous People. The Commission on Human Rights, in its resolution 1994/28 of 4 March 1994, requested the Working Group to consider the possible establishment of a "permanent forum for indigenous people" and a sub-item on this question is included in the provisional agenda prepared by the secretariat.

3. Organization of work

4. The attention of the Working Group is drawn to the provisional agenda and the need to complete its discussion of the six substantive items within the five working days allotted. In previous sessions, the Chairperson-Rapporteur has set strict time-limits in order to ensure that all participants wishing to make a statement are given the opportunity to do so. In view of the shorter time-frame for the twelfth session of the Working Group compared to its sessions in the previous two years, it will be necessary to comply with the time-limits established.

4. Standard-setting activities

5. Under the mandate established by the Economic and Social Council in its resolution 1982/34 of 7 May 1982, the Working Group is authorized to meet to "give special attention to the evolution of standards concerning the rights of indigenous populations". At its fourth session in 1985, the Working Group decided under this item of its agenda that it should aim at producing as a first formal step a draft declaration on indigenous rights. At that session, seven principles were drafted in preliminary wording (E/CN.4/Sub.2/1985/22, annex II). As in previous years, the report of the Working Group was transmitted to Governments, intergovernmental and non-governmental organizations and indigenous organizations. Comments on the draft principles were requested from these interested parties. It may be noted that every year since 1985, the draft declaration as prepared by the Chairperson-Rapporteur, Ms. Erica-Irene Daes, has been transmitted by the Secretary-General to Governments, intergovernmental and non-governmental organizations, and indigenous organizations requesting their proposals, suggestions and comments. At its fifth session in 1987, the Working Group adopted 14 draft principles in preliminary wording (E/CN.4/Sub.2/1987/22, annex II). The Chairperson-Rapporteur of the Working Group, Ms. Erica-Irene Daes, was entrusted with the task of preparing a set of draft principles and preambular paragraphs for insertion into a future declaration. This working paper was adopted as a preliminary draft declaration and formed the basis of discussions at the sixth session of the Working Group in 1988 (E/CN.4/Sub.2/1988/25). The Working Group recommended that the Chairperson-Rapporteur, Ms. Erica-Irene Daes, prepare a first revised text of the draft declaration based on comments made during the Working Group's sixth session and the written observations received from Governments, intergovernmental and non-governmental organizations and indigenous organizations (E/CN.4/Sub.2/1988/24, annex II).

6. At its seventh session in 1989, the Working Group had before it an analytical compilation of comments received and a first revised text of the draft declaration as prepared by the above-mentioned Chairperson-Rapporteur (E/CN.4/Sub.2/1989/33, Add.1). This allowed for a discussion of the draft declaration article by article (E/CN.4/Sub.2/1989/36, paras. 61-92). At the eighth session of the Working Group in 1990, it was decided to establish three informal drafting groups to continue the elaboration of the draft declaration. The draft that was prepared by the Working Group at its 1990 session was based on the text of the first revised draft declaration and the analytical commentary as prepared by the Chairperson-Rapporteur, Ms. Erica-Irene Daes, and the discussions carried out in the informal drafting groups (E/CN.4/Sub.2/1990/42 and annexes). The Chairperson-Rapporteur was, once again, invited to revise the draft declaration on the basis of these comments and the written observations of Governments, intergovernmental and non-governmental organizations and indigenous organizations for presentation at the ninth session of the Working Group.

7. At its ninth session in 1991, the Working Group considered the working paper of the draft declaration of the above-mentioned Chairperson-Rapporteur (E/CN.4/Sub.2/1991/36). Further discussions of the preambular and operative paragraphs of the draft declaration took place and the text was agreed upon by members of the Working Group (E/CN.4/Sub.2/1991/40, annex II). The Chairperson-Rapporteur was entrusted with the preparation of a working paper based on written suggestions provided by Governments and indigenous organizations. At its tenth session in 1992, the Working Group had before it a revised working paper as prepared by the Chairperson-Rapporteur containing the draft declaration (E/CN.4/Sub.2/1992/28). On the basis of the text before the session, the Working Group completed a preliminary reading of the preambular and operative paragraphs and began a second reading (E/CN.4/Sub.2/1992/33). The Working Group recommended that the draft declaration as revised by the Chairperson-Rapporteur on the basis of the comments made during its session as well as the information received from interested parties be presented to the Working Group at its eleventh session.

8. At its eleventh session in 1993, the Working Group had before it the working paper of the Chairperson-Rapporteur (E/CN.4/Sub.2/1993/26). Further elaborations of the draft declaration were made by members of the Working Group during the session (E/CN.4/Sub.2/AC.4/1993/CRP.4). The Working Group completed the second reading of the draft declaration, agreed upon a text (E/CN.4/Sub.2/1993/29, annex 1) and submitted it to the Sub-Commission on Prevention of Discrimination and Protection of Minorities for its consideration. In its resolution 1993/46 of 26 August 1993, the Sub-Commission decided to postpone until its forty-sixth session consideration of the draft declaration; it requested the Secretary-General to submit the draft declaration to the appropriate services within the Centre for Human Rights for its technical revision; it also requested the Secretary-General to transmit the text of the draft declaration to indigenous peoples and organizations, Governments and intergovernmental and non-governmental organizations. The technical review by the Centre for Human Rights, as requested by the Sub-Commission, is contained in document E/CN.4/Sub.2/1994/2 and the draft declaration as agreed upon by members of the Working Group at its eleventh session is contained in addendum 1 to that document. Written comments submitted to the secretariat from Governments, intergovernmental

organizations, and indigenous and non-governmental organizations are contained in documents E/CN.4/Sub.2/AC.4/1994/2, E/CN.4/Sub.2/AC.4/1994/3 and E/CN.4/Sub.2/AC.4/1994/4 respectively.

5. Review of developments

9. In accordance with the mandate established under Economic and Social Council resolution 1982/34, the Working Group is authorized to review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous populations, to analyse such materials, and to submit its conclusions to the Sub-Commission, bearing in mind the final report of the Special Rapporteur of the Sub-Commission, Mr. José R. Martínez Cobo, entitled "Study of the problem of discrimination against indigenous populations" (E/CN.4/Sub.2/1986/7 and Add. 1-4).

10. The item on the agenda reviewing developments affecting indigenous peoples provides invaluable information to members of the Working Group. The information provided is considered by them as strengthening ongoing efforts of the United Nations system to recognize, promote, protect and restore the rights of indigenous peoples (E/CN.4/Sub.2/1993/29, para. 211). In its resolution 1994/29 of 4 March 1994, the Commission on Human Rights urged the Working Group to continue its comprehensive review of the developments and of the situations and aspirations of indigenous peoples throughout the world. However, it may be noted that the Working Group is not a chamber of complaints and cannot act upon specific allegations concerning violations of human rights. At its eleventh session in 1993, 126 speakers addressed this item of the agenda. Information received from Governments, intergovernmental organizations and indigenous and non-governmental organizations is contained in documents E/CN.4/Sub.2/AC.4/1994/5, E/CN.4/Sub.2/AC.4/1994/6 and E/CN.4/Sub.2/AC.4/1994/7 respectively.

6. Study on treaties, agreements and other constructive arrangements between States and indigenous peoples

11. At its fifth session in 1987, the Working Group recommended to the Sub-Commission the appointment of Mr. Miguel Alfonso Martínez as a Special Rapporteur to prepare a study on the treaties formerly concluded with indigenous peoples in various parts of the world. In its resolution 1987/17 of 2 September 1987, the Sub-Commission endorsed the recommendation and requested Mr. Alfonso Martínez to draft the general outline of such a study. The Commission on Human Rights, in its resolution 1988/56 of 9 March 1988, recommended to the Economic and Social Council that it authorize the appointment of Mr. Alfonso Martínez as Special Rapporteur with the mandate of preparing an outline on the possible purposes, scope and sources of a study to be conducted on the potential utility of treaties, agreements and other constructive arrangements between indigenous populations and Governments for the purpose of ensuring the promotion and protection of the human rights and fundamental freedoms of indigenous populations. On 27 May 1988, the Economic

and Social Council adopted decision 1988/134 by which it authorized the appointment of the Special Rapporteur with the mandate of preparing the outline.

12. The outline of the aforementioned study was presented to the Sub-Commission in 1988 (E/CN.4/Sub.2/1988/24/Add.1). In its resolution 1988/20 of 1 September 1988, the Sub-Commission endorsed the outline and requested authorization of the Commission on Human Rights and the Economic and Social Council to proceed with the study. The Commission endorsed the recommendations in its resolution 1989/41 of 6 March 1989 and the Economic and Social Council authorized the study and confirmed the appointment of the Special Rapporteur in its resolution 1989/77 of 24 May 1989.

13. The Special Rapporteur presented a working paper and two questionnaires he had prepared to the Working Group at its eighth session in 1990 (E/CN.4/Sub.2/1990/42, annex VI). The information which could be provided through the questionnaires was considered by the Special Rapporteur as vital to the study. The Sub-Commission, in its resolution 1990/28, requested the Secretary-General to submit the working paper and questionnaires to Governments and indigenous organizations for their comments. A preliminary report of the Special Rapporteur was presented to the Working Group at its ninth session in 1990 and to the Sub-Commission at its forty-third session (E/CN.4/Sub.2/1991/33). The Sub-Commission adopted decision 1991/111 of 29 August 1991 requesting that the questionnaires be submitted once again to Governments and indigenous organizations and endorsing the recommendation of the Special Rapporteur that a progress report be prepared for its forty-fourth session in 1992.

14. A first progress report was submitted to the Working Group at its tenth session and the Sub-Commission at its forty-fourth session in 1992 (E/CN.4/Sub.2/1992/32). In its decision 1992/110 of 27 August 1992, the Sub-Commission requested the Secretary-General to transmit the two questionnaires to Governments and indigenous organizations and requested the Special Rapporteur to present a second progress report to the Working Group at its twelfth session and the Sub-Commission at its forty-fourth session. In its decision 1993/110 of 26 August 1993, the Sub-Commission welcomed the discussions held at the eleventh session of the Working Group and reiterated its request to the Special Rapporteur to submit a second progress report. The Special Rapporteur's second progress report is available in document E/CN.4/Sub.2/1994/32.

7. International Decade of the World's Indigenous People

15. The recommendation to proclaim an international decade of the world's indigenous people was made in the Programme of Action of the World Conference on Human Rights (para. 32). The General Assembly, in its resolution 48/163 of 21 December 1993, proclaimed the International Decade of the World's Indigenous People, to commence on 10 December 1994, with the period 1 January to 9 December 1994 to be set aside for planning. The General Assembly invited indigenous organizations and other interested non-governmental organizations to consider the contributions they can make to the success of the Decade, with a view to presenting them to the Working Group; decided to observe one day of every year as the International Day of Indigenous People and invited the

Working Group to identify an appropriate day for this purpose; and requested that the meeting to review the International Year also consider preparations for the Decade and report to the Working Group.

16. The Commission on Human Rights, in its resolution 1994/26 of 4 March 1994, restated the above-mentioned recommendations. In particular, the Commission invited the Working Group to propose an appropriate day of every year to be observed as the International Day of Indigenous People, following consultations with indigenous people; and requested the Working Group to identify possible projects and other activities in connection with the Decade and submit them, through the Sub-Commission, to the Commission on Human Rights at its fifty-first session. The suggestions and recommendations arising from the Technical Meeting on the International Year and Decade are contained in document E/CN.4/Sub.2/AC.4/1994/8. A note by the secretariat on the International Day of Indigenous People is contained in document E/CN.4/Sub.2/AC.4/1994/9; any comments by indigenous organizations are contained in addenda to the document.

8. Future role of the Working Group

17. At its eleventh session, the Working Group had before it a note on this question prepared by the Chairperson-Rapporteur, Ms. Erica-Irene Daes (E/CN.4/Sub.2/AC.4/1993/8). Following discussions on the item, the above-mentioned Chairperson-Rapporteur and the other members of the Working Group decided to request Mr. Miguel Alfonso Martínez to update and supplement the note. The relevant updated note prepared by Mr. Alfonso Martínez is contained in document E/CN.4/Sub.2/AC.4/1994/10.

18. Note may also be taken of the recommendations made in the Programme of Action of the World Conference on Human Rights to consider the renewal and update of the Working Group upon completion of the draft declaration on the rights of indigenous peoples (para. 29) and the establishment of a permanent forum for indigenous people in the United Nations system (para. 32). In connection with the latter, the General Assembly, in its resolution 48/163, requested the Commission on Human Rights at its fiftieth session to give the proposal its priority consideration. The Commission adopted resolution 1994/28 of 4 March 1994 which requests the Assistant Secretary-General for Human Rights to invite Governments and indigenous organizations to give their views on this matter and transmit contributions received to the Working Group, together with a technical note addressing institutional issues. The technical note of the secretariat is contained in document E/CN.4/Sub.2/AC.4/1994/11; any comments received from Governments and indigenous organizations are contained in addenda to the document. The Working Group is requested by the Commission on Human Rights to submit its suggestions for alternatives, through the Sub-Commission, at its fifty-first session.

9. Other matters

19. Under this item of the agenda, members of the Working Group consider a range of questions including meetings and seminars which have been held or are due to be held in the near future. In September 1991 an expert meeting was held at Nuuk, Greenland, on experiences of indigenous self-government (E/CN.4/1992/42) and in May 1992, a further expert meeting was held

in Santiago, Chile, on indigenous peoples and the environment (E/CN.4/Sub.2/1992/31). In this connection, note may be taken of Commission on Human Rights resolution 1994/29 of 4 March 1994 which endorsed the proposal to hold a seminar on land rights and claims with the participation of Governments, indigenous people and experts.

20. The Board of Trustees of the Voluntary Fund for Indigenous Populations held its seventh session from 25 to 29 April and agreed to recommend to the Secretary-General that travel grants be given to 43 indigenous delegates. A report on the activities of the Voluntary Fund will be submitted to the General Assembly at its forty-ninth session. It may also be noted that the General Assembly in its resolution 48/163 authorized the Secretary-General to open a voluntary fund for the International Decade.

21. A further matter of interest to members of the Working Group has been the research undertaken by the former United Nations Centre on Transnational Corporations. In accordance with Sub-Commission resolutions 1989/35 of 1 September 1989, 1990/26 of 31 August 1990, 1991/31 of 29 August 1991, and 1992/33 of 27 August 1992, a series of reports have been presented to the Working Group and its parent body. The Centre on Transnational Corporations presented a first report in the form of a methodology and questionnaire in 1990 (E/CN.4/Sub.2/AC.4/1990/6). A preliminary report was submitted to the Working Group in 1991 (E/CN.4/Sub.2/1991/49) and a further substantive report to the tenth session of the Working Group in 1992 (E/CN.4/Sub.2/1992/54). A fourth and final report is submitted to the twelfth session of the Working Group and the forty-sixth session of the Sub-Commission and is contained in document E/CN.4/Sub.2/1994/30. Information received on this and other matters considered under this item are contained in document E/CN.4/Sub.2/AC.4/1994/12.

10. Adoption of the report of the Working Group

22. Under rule 37 of the rules of procedure, the Working Group is to report to the Sub-Commission on the work of its session. The report of the Working Group, which is prepared while the Sub-Commission is in-session, will be contained in document E/CN.4/Sub.2/1994/30.

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